

Before the
Federal Communications Commission
Washington, D.C. 20554

AUG 2 2 51 PM '93

MM Docket No. 93-64
DISPATCHED BY

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Corning, California) RM-8195

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 14, 1993;

Released: August 2, 1993

By the Chief, Allocations Branch:

1. The Commission considers herein the *Notice of Proposed Rule Making*, 8 FCC Rcd 2166 (1993), issued in response to a petition filed on behalf of Phoenix Broadcasting, Inc. ("petitioner"), licensee of Station KCEZ(FM), Channel 264B, Corning, California, proposing the substitution of Channel 264C1 for Channel 264B and modification of its license accordingly.¹ Petitioner filed supporting com-

ments in response to the *Notice*. Fatima Response, Inc., ("FRI") permittee of Station KRKD-FM, Channel 261C3, Dunsmuir, California, and Contour Communications ("Contour") each filed comments and counterproposals.²

2. We believe the public interest would be served by substituting Channel 264C1 for Channel 264B at Corning since it could provide an expanded coverage FM service to the community. Channel 264C1 can be allotted to Corning at the petitioner's specified site,³ consistent with the minimum distance separation requirements of the Commission's Rules. However, the issuance of a license for Channel 264C1 at Corning may be withheld until Station KWHO(FM), Channel 265A, Weed, California, is licensed on Channel 272C1 at the site specified in its construction permit.⁴ As requested, we are modifying the petitioner's license herein to specify operation on Channel 264C1, in accordance with the provisions of Section 1.420(g) of the Commission's Rules.

3. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 13, 1993**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to Corning, California, as follows:

City	Channel No.
Corning, California	264C1

¹ As stated in the *Notice*, petitioner's present transmitter site, located in Zone I-A at coordinates 39-53-17 and 122-37-38, is licensed as a Class B facility, the highest class allowed in that Zone. The proposal under consideration herein would relocate the transmitter for Station KCEZ(FM) to Zone II, where the maximum FM facilities authorized are for Class C stations. See Sections 73.202(a), 73.205 and 73.210 of the Commission's Rules.

² Both counterproposals are unacceptable pursuant to the Commission's Rules. FRI requests the substitution of Channel 261C1 for Channel 261C3 at Dunsmuir, and modification of its permit for Station KRKD-FM accordingly. Contour requests the allotment of Channel 265A to Weaverville, as its first local aural transmission service.

Although FRI and Contour each signed their counterproposals and provided their addresses, both failed to include an affidavit verifying that the statements contained in their comments are accurate to the best of their knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel shall be signed and verified by the party and his/her address stated. In the absence of such verification, a pleading may be returned as unacceptable. See *Monroeville, Alabama*, 5 FCC Rcd 7027 (1990). Section 1.402(b) of the Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification.

Moreover, even if the FRI and Contour proposals had not been procedurally defective they are technically deficient, and therefore cannot be considered. Although each counterproposal complies with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, the requested

sites are unacceptable. Specifically, a staff terrain profile analysis reveals that, due to the intervening terrain at Dunsmuir and at Weaverville, the sites chosen by FRI and Contour would require the construction of extremely tall towers in those mountainous areas in order to provide the requisite 70 dBu coverage to their specified communities, as required by Section 73.315 of the Commission's Rules. From that analysis we determined that at the Dunsmuir site at coordinates 40-54-29 and 122-26-38, a tower of 800 meters (2,624 feet) AGL would be required. The Weaverville site, at coordinates 40-52-03 and 122-59-26, would require a tower of 700 meters (2,296 feet) AGL due to an intervening major terrain obstruction of approximately 2,175 meters (7,134 feet) AMSL. Neither FRI nor Contour provided any specific showings attesting to their ability to comply with the requirements of Section 73.315 of the Commission's Rules from their selected sites, or that they would be willing to build towers of the magnitude required at those sites to provide city grade coverage to Dunsmuir and Weaverville.

³ Coordinates used for Channel 264C1 at Corning are 40-15-31 and 122-05-20.

⁴ As stated in the *Notice*, Station KWHO(FM) was modified from Channel 265A to Channel 272C1 at Weed, California, in MM Docket No. 88-28. See 5 FCC Rcd 4558 (1990), *recon. denied*, 7 FCC Rcd 4641 (1992). Coordinates at the site specified in Station KWHO(FM)'s construction permit are 41-21-12 and 122-15-35 (File No. BPH-9011301D). Therefore, Station KWHO(FM) is no longer entitled to protection for its former Channel 265A at Weed. We will serve a copy of this *Report and Order* on Tristar Broadcasting Corporation, Inc., licensee of Station KWHO(FM).

4. IT IS FURTHER ORDERED, That pursuant to Section 316(a) of the Communications Act of 1934, as amended, the license issued to Phoenix Broadcasting, Inc. for Station KCEZ(FM), IS MODIFIED to specify operation on Channel 264C1 in lieu of Channel 264B, subject to the following conditions:

- (a) Within 90 days of the effective date of this *Order*, the licensee shall submit to the Commission a minor change application for a construction permit (Form 301), specifying the new facility;
- (b) Upon grant of the construction permit, program tests may be conducted in accordance with Section 73.1620; and
- (c) Nothing contained herein shall be construed to authorize a change in transmitter location or to avoid the necessity of filing an environmental assessment pursuant to Section 1.1307 of the Commission's Rules.

5. Pursuant to Commission Rule Section 1.1104(1)(k) and (2)(k), any party seeking a change of community of license of an FM or television allotment or an upgrade of an existing FM allotment, if the request is granted, must submit a rule making fee when filing its application to implement the change in community of license and/or upgrade. As a result of this proceeding, Phoenix Broadcasting, Inc., licensee of Station KCEZ(FM), is required to submit a rule making fee in addition to the fee required for the applications to effectuate the upgrade at Corning, California.

6. IT IS FURTHER ORDERED, That the Secretary shall send a copy of this *Order* by Certified Mail, Return Receipt Requested, to Tristar Broadcasting Corporation, Inc., Radio Station KWHO(FM), P.O. Box 1023, Weed, California 96094.

7. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

8. For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530.

FEDERAL COMMUNICATIONS COMMISSION

Michael C. Ruger
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau